

REFERENCE TITLE: election reform; manual count.

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2859

Introduced by
Representatives Downing, Miranda B: Senators Garcia, Harper

AN ACT

AMENDING SECTIONS 16-411, 16-445, 16-446, 16-535, 16-602, 16-608, 16-621, 16-661, 16-664 AND 16-677, ARIZONA REVISED STATUTES; RELATING TO CONDUCT OF ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-411, Arizona Revised Statutes, is amended to
3 read:

4 16-411. Designation of election precincts and polling places:
5 electioneering

6 A. The board of supervisors of each county ~~shall~~, on or before
7 December 1 of each year preceding the year of a general election, by an
8 order, **SHALL** establish a convenient number of election precincts in the
9 county and define the boundaries thereof. Such election precinct boundaries
10 shall be so established as included within election districts prescribed by
11 law for elected officers of the state and its political subdivisions
12 including community college district precincts, except those elected officers
13 provided for in titles 30 and 48.

14 B. Not less than twenty days before a general or primary election, and
15 at least ten days before a special election, the board shall designate one
16 polling place within each precinct where the election shall be held. Upon a
17 specific finding of the board, included in the order or resolution
18 designating polling places pursuant to this subsection, that no suitable
19 polling place is available within a precinct, a polling place for such
20 precinct may be designated within an adjacent precinct. Adjacent precincts
21 may be combined if boundaries so established are included in election
22 districts prescribed by law for state elected officials and political
23 subdivisions including community college districts but not including elected
24 officials prescribed by titles 30 and 48. The officer in charge of elections
25 may also split a precinct for administrative purposes. Any such polling
26 places shall be listed in separate sections of the order or resolution.

27 C. If the board fails to designate the place for holding the election,
28 or if it cannot be held at or about the place designated, the justice of the
29 peace in the precinct ~~shall~~, two days before the election, by an order,
30 copies of which he shall immediately post in three public places in the
31 precinct, **SHALL** designate the place within the precinct for holding the
32 election. If there is no justice of the peace in the precinct, or if the
33 justice of the peace fails to do so, the election board of the precinct shall
34 designate and give notice of the place within the precinct of holding the
35 election. For any election in which there are no candidates for elected
36 office appearing on the ballot, the board may consolidate polling places and
37 precinct boards and may consolidate the tabulation of results for that
38 election if all of the following apply:

39 1. All affected voters are notified by mail of the change at least
40 thirty-three days before the election.

41 2. Notice of the change in polling places includes notice of the new
42 voting location, notice of the hours for voting on election day and notice of
43 the telephone number to call for voter assistance.

44 3. All affected voters receive information on early voting that
45 includes the application used to request an early voting ballot.

D. The board is not required to designate a polling place for special district mail ballot elections held pursuant to article 8.1 of this chapter, but the board may designate one or more sites for voters to deposit marked ballots until 7:00 p.m. on the day of the election.

E. Except as provided in subsection F OF THIS SECTION, a public school shall provide sufficient space for use as a polling place for any city, county or state election when requested by the officer in charge of elections.

F. The principal of the school may deny a request to provide space for use as a polling place for any city, county or state election if, within two weeks after a request has been made, he provides a written statement indicating a reason the election cannot be held in the school, including any of the following:

1. Space is not available at the school.
2. The safety or welfare of the children would be jeopardized.

G. The board shall make available to the public as a public record a list of the polling places for all precincts in which the election is to be held including identification of polling place changes that were submitted to the United States department of justice for approval.

H. Except in the case of an emergency, any facility that is used as a polling place on election day shall allow electioneering and other political activity outside of the seventy-five foot limit prescribed by section 16-515 in public areas and parking lots used by voters.

I. FOR ANY PRECINCT WITH AT LEAST ONE THOUSAND EIGHT HUNDRED REGISTERED VOTERS ACCORDING TO THE MOST RECENT COUNT OF REGISTERED VOTERS IMMEDIATELY PRECEDING THAT ELECTION, THE BOARD OF SUPERVISORS SHALL ADMINISTRATIVELY DIVIDE THE PRECINCT INTO TWO PORTIONS AND EACH PORTION OF THE PRECINCT SHALL BE SERVED BY A SEPARATE ELECTION BOARD. BOTH PORTIONS OF THE ADMINISTRATIVELY DIVIDED PRECINCT SHALL VOTE IN A SINGLE POLLING PLACE.

Sec. 2. Section 16-445, Arizona Revised Statutes, is amended to read:

16-445. Filing of computer election programs with secretary of state

A. For any state, county, school district, special district, city or town election, including primary elections, utilizing vote tabulating devices as provided in this article, there shall be filed with the secretary of state at least two weeks before the date of the election a copy of each computer program for each election. ALL COMPUTER PROGRAMS SHALL USE OPEN SOURCE CODING AND SHALL NOT INCLUDE ANY TRADE SECRET OR OTHER PROPRIETARY SOFTWARE CODE. IN ADDITION TO THE LOGIC AND ACCURACY TESTING PRESCRIBED BY SECTION 16-449, THE OFFICER IN CHARGE OF ELECTIONS SHALL APPOINT A TEAM OF PERSONS WITH EXPERTISE IN COMPUTER SECURITY WHO ARE INDEPENDENT OF THE VENDORS USED BY THAT OFFICER IN CHARGE OF ELECTIONS. THE INDEPENDENT TEAM SHALL PERFORM ADDITIONAL TESTING TO DETERMINE WHETHER THE COMPUTER SOFTWARE AND OTHER SYSTEMS USED IN THAT ELECTION ARE VULNERABLE TO OUTSIDE ATTACK, MALICIOUS ENCRYPTION, REMOTE MANIPULATION OF RESULTS OR OTHER FAILURES IN THE SECURITY

1 AND INTEGRITY OF THE COMPUTER VOTE COUNT. THE BOARD OF SUPERVISORS SHALL
2 PROVIDE FOR THE COMPENSATION OF THE INDEPENDENT COMPUTER SECURITY TEAM.

3 B. A copy of any subsequent revision of the computer program shall be
4 filed in the same manner within forty-eight hours following the revision.

5 C. Any tape or disc used in the programming or operation of a vote
6 tabulating device upon which votes are counted and any tape used in compiling
7 vote totals shall be kept under lock and seal, and if there is a retally of
8 votes, the officer entrusted with the tapes or discs shall submit his
9 affidavit stating that they are the tapes or discs, or both, used in the
10 election and have not been altered.

11 D. All materials submitted to the secretary of state shall be used by
12 the secretary of state or attorney general to preclude fraud or any unlawful
13 act under the laws of this title and title 19 and shall not be disclosed or
14 used for any other purpose.

15 E. Each program tape or disc or any other material submitted to the
16 secretary of state shall be returned to the county, city or town within six
17 months after the close of the election for which it was submitted except:

- 18 1. When a court ordered recount is pending.
- 19 2. When a restraining order is in effect.
- 20 3. When any other legal action is pending.

21 Sec. 3. Section 16-446, Arizona Revised Statutes, is amended to read:

22 16-446. Specifications of electronic voting system

23 A. An electronic voting system consisting of a voting or marking
24 device in combination with vote tabulating equipment shall provide facilities
25 for voting for candidates at both primary and general elections.

26 B. An electronic voting system shall:

- 27 1. Provide for voting in secrecy when used with voting booths.
- 28 2. Permit each elector to vote at any election for any person for any
29 office whether or not nominated as a candidate, to vote for as many persons
30 for an office as he is entitled to vote for, ~~AND~~ to vote for or against any
31 question ~~upon~~ ON which he is entitled to vote, and the vote tabulating
32 equipment shall reject choices recorded on his ballot card or paper ballot if
33 the number of choices exceeds the number ~~which~~ THAT he is entitled to vote
34 for the office or on the measure. THE VOTING SYSTEM SHALL ALSO PERMIT A
35 VOTER TO CAST A VOTE FOR "NO VOTE" FOR EACH OFFICE AND ISSUE ON THE BALLOT AT
36 THAT ELECTION.

37 3. Prevent the elector from voting for the same person more than once
38 for the same office.

39 4. Be suitably designed for the purpose used, ~~AND~~ BE of durable
40 construction, and may be used safely, efficiently and accurately in the
41 conduct of elections and counting ballots.

42 5. Be provided with means for sealing the voting or marking device
43 against any further voting after the close of the polls and the last voter
44 has voted.

1 6. When properly operated, record correctly and count accurately every
2 vote cast.

3 7. Provide a paper document or ballot that visually indicates the
4 voter's selections AND THAT THE VOTER MAY USE TO VERIFY THE VOTER'S CHOICES.
5 ANY PAPER DOCUMENT THAT IS GENERATED BY AN ELECTRONIC TABULATING MACHINE AND
6 THAT IS NOT A BALLOT SHALL BE DEPOSITED IN A SEMITRANSSPARENT OR TRANSLUCENT,
7 SECURED CONTAINER THAT IS RETAINED AT THE POLLING PLACE DURING THE TIME THE
8 POLLS ARE OPEN AND THAT SHALL BE DELIVERED TO THE CENTRAL COUNTING CENTER
9 AFTER THE POLLS ARE CLOSED. THE PAPER DOCUMENTS SHALL BE RETAINED IN THE
10 SECURE CONTAINER UNTIL THE TIME FOR ALL RECOUNTS HAS EXPIRED.

11 Sec. 4. Section 16-535, Arizona Revised Statutes, is amended to read:
12 16-535. Election marshal; appointment; powers and duties

13 A. The board of supervisors ~~shall~~, at the time provided in section
14 16-531, SHALL appoint a qualified voter of the precinct as election marshal.

15 B. The election marshal shall preserve order at the polls and permit
16 no violation of the election laws and for that purpose is vested with powers
17 of a constable from the opening of the polls until the count of the ballots
18 is completed. THE ELECTION MARSHAL SHALL ALSO PERIODICALLY MEASURE THE
19 LENGTH OF WAITING TIMES AT THAT POLLING PLACE THROUGHOUT THE DAY AND IF THE
20 WAITING TIME IS THIRTY MINUTES OR MORE, THE MARSHAL SHALL INFORM THE OFFICER
21 IN CHARGE OF ELECTIONS AND SHALL REQUEST ADDITIONAL VOTING MACHINES, VOTING
22 BOOTHS AND BOARD WORKERS, AS APPROPRIATE. The election marshal may perform
23 the duties of any other election board member on a relief basis.

24 Sec. 5. Section 16-602, Arizona Revised Statutes, is amended to read:
25 16-602. Removal of ballots from ballot boxes; disposition of

26 ballots folded together or excessive ballots

27 A. The ballots cast in the election shall first be removed from the
28 ballot box and counted without being opened, except as may be necessary to
29 ascertain that the number of ballots cast corresponds with the number of
30 names on the poll lists.

31 B. If two or more ballots are found folded together appearing as a
32 single ballot, they shall be laid aside until the count of the ballots is
33 completed. If it then appears by comparison of the count with the number of
34 names on the poll lists, that the ballots thus folded together were cast by
35 one elector, they shall be destroyed. If the ballots in the box are still
36 found to exceed in number the names on the poll lists, the ballots, except
37 those destroyed, shall be replaced in the box, and one of the judges ~~shall~~,
38 without looking in the box, SHALL draw therefrom, one at a time, and destroy
39 unopened, a number of ballots equal to the excess, and the election board
40 shall record on the poll lists the number of ballots so destroyed and shall
41 then sign the poll list.

42 C. FOR EACH ELECTION, THE OFFICER IN CHARGE OF THE ELECTION SHALL
43 CONDUCT A HAND COUNT OF AT LEAST FIVE PER CENT OF THE PRECINCTS IN THAT
44 ELECTION. THE PRECINCTS SHALL BE SELECTED BY LOT WITHOUT THE USE OF A
45 COMPUTER IMMEDIATELY AFTER THE CLOSING OF THE POLLS. THE RANDOM DRAWING OF

PRECINCTS SHALL BE CONDUCTED AT THE CENTRAL COUNTING CENTER AND THE OFFICER IN CHARGE OF ELECTIONS SHALL PROMPTLY NOTIFY THE SELECTED PRECINCTS. THE ORIGINAL ELECTION BOARD FOR THAT PRECINCT MAY CONDUCT THE HAND COUNT AND SHALL RECEIVE ADDITIONAL COMPENSATION AS DETERMINED BY THE BOARD OF SUPERVISORS, OR THE OFFICER IN CHARGE OF ELECTIONS MAY NAME A NEW ELECTION BOARD FOR THE HAND COUNT.

D. IF THE HAND COUNT RESULTS IN A DISCREPANCY IN ANY CONTEST OR MEASURE IN TEN PER CENT OR MORE OF THE HAND COUNTED PRECINCTS, THE HAND COUNT SHALL BE EXPANDED TO INCLUDE ALL PRECINCTS. THE HAND COUNT CONSTITUTES THE OFFICIAL COUNT OF THE VOTES.

Sec. 6. Section 16-608, Arizona Revised Statutes, is amended to read:

16-608. Delivery of ballots; electronic voting system

A. After the close of the polls and after compliance with section 16-602, the members of the election board shall prepare a report in ~~duplicate~~ **TRIPLICATE** of the number of voters who have voted, as indicated on the poll list, and place this report in the ballot box or metal container, in which the voted ballots have been placed, which thereupon shall be sealed with a numbered seal and delivered promptly by two members of the election board of different political parties to the central counting place or other receiving station designated by the board of supervisors or officer in charge of elections, which shall not be more than fifty miles from the polling place from which the ballots are delivered. **THE INSPECTOR SHALL POST IN A PUBLIC LOCATION IN THE POLLING PLACE ONE OF THE TRIPLICATE REPORTS OF THE NUMBER OF VOTERS WHO HAVE VOTED.** The person in charge of receiving ballots shall give a numbered receipt acknowledging receipt of such ballots to the person in charge who delivers such ballots **AND THE VOTE TOTALS FOR EACH OFFICE AND MEASURE THAT IS ON THE BALLOT.**

B. The chairman of the county committee of each political party represented on the ballot may designate a member of his party to accompany the ballots from each polling place to the central counting place. Such party representative shall serve without compensation.

Sec. 7. Section 16-621, Arizona Revised Statutes, is amended to read:

16-621. Proceedings at the counting center

A. All proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections and shall be conducted in accordance with the approved instructions and procedures manual provided for in section 16-452 under the observation of representatives of each political party and the public, but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. There shall be no preferential counting of ballots for the purpose of projecting the outcome of the election. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall

1 be made of the damaged ballot in the presence of witnesses and substituted
 2 for the damaged ballot. All duplicate ballots shall be clearly labeled
 3 "duplicate" and shall bear a serial number which shall be recorded on the
 4 damaged or defective ballot.

5 B. IF AN ELECTRONIC VOTING SYSTEM IS USED AND THE ELECTION INCLUDES AT
 6 LEAST ONE CONTESTED RACE OR MEASURE, THE OFFICER IN CHARGE OF ELECTIONS SHALL
 7 CONDUCT AN ELECTION VALIDATION TEST WITHIN SEVEN DAYS AFTER ALL BALLOTS HAVE
 8 BEEN COUNTED. THE VALIDATION TEST SHALL BE CONDUCTED AS FOLLOWS:

9 1. FOR FIVE PER CENT OF THE PRECINCTS, A HAND COUNT OF EARLY BALLOTS
 10 CAST FROM THAT PRECINCT. THE PRECINCTS SHALL BE SELECTED RANDOMLY BY LOT
 11 WITHOUT THE USE OF A COMPUTER.

12 2. EARLY BALLOT TOTALS FROM THE SELECTED PRECINCTS SHALL BE COMPARED
 13 WITH TOTALS OBTAINED USING AUTOMATED TABULATING EQUIPMENT.

14 3. DISCREPANCIES IN VOTE TOTALS SHALL BE RESOLVED PURSUANT TO
 15 SUBSECTION C OF THIS SECTION.

16 4. VALIDATION TEST HAND COUNTS SHALL INCLUDE TALLIES OF ALL FEDERAL,
 17 STATE AND LEGISLATIVE OFFICES AND THE OFFICES OF COUNTY ATTORNEY AND COUNTY
 18 SHERIFF, IF APPEARING ON THE BALLOT, AND ALL BALLOT MEASURES.

19 5. A SPECIAL TALLY BOARD SHALL CONDUCT THE HAND COUNT IMMEDIATELY
 20 AFTER THE EARLY BALLOTS HAVE BEEN COUNTED BY THE AUTOMATIC TABULATING
 21 EQUIPMENT AND SORTED BY PRECINCT.

22 C. IF THE RANDOMLY SELECTED HAND COUNTS RESULT IN DIFFERENCES OF TWO
 23 VOTES OR MORE WHEN COMPARED TO THE ELECTRONIC TABULATION OF THOSE SAME
 24 BALLOTS, THE HAND COUNT SHALL BE EXPANDED TO INCLUDE TWO TIMES THE NUMBER OF
 25 PRECINCTS COUNTED IN THE INITIAL HAND COUNT. IF THE CUMULATIVE DISCREPANCY
 26 FOR ANY RACE OR MEASURE EXCEEDS FIVE VOTES, THE HAND COUNT SHALL BE EXPANDED
 27 TO INCLUDE ALL PRECINCTS FOR THE RACES OR MEASURES IN WHICH THE FIVE OR MORE
 28 VOTE DISCREPANCY OCCURRED. BALLOTS THAT ARE COUNTED BY HAND ARE SUBJECT TO
 29 THE SAME STANDARDS FOR BALLOT REJECTION THAT APPLY TO BALLOTS THAT ARE
 30 TABULATED AUTOMATICALLY. THE HAND COUNT CONSTITUTES THE OFFICIAL COUNT OF
 31 THE VOTES AND IF A FULL HAND COUNT IS CONDUCTED FOR ANY RACE OR MEASURE, THE
 32 OFFICER IN CHARGE OF THE ELECTION SHALL INVESTIGATE THE AUTOMATIC TABULATING
 33 EQUIPMENT THAT WAS USED AND SHALL INFORM THE SECRETARY OF STATE THAT THE
 34 EQUIPMENT THAT WAS USED MAY REQUIRE REVIEW FOR POSSIBLE REVOCATION OF
 35 CERTIFICATION.

36 ~~B.~~ D. If for any reason it becomes impracticable to count all or a
 37 part of the ballots with tabulating equipment, the officer in charge of
 38 elections may direct that they be counted manually, following as far as
 39 practicable the provisions governing the counting of paper ballots.

40 Sec. 8. Section 16-661, Arizona Revised Statutes, is amended to read:

41 ~~16-661.~~ Automatic recount; requirements; exemption

42 A. A recount of the vote is required when the canvass of returns in a
 43 primary or general election shows that the margin between the two candidates
 44 receiving the greatest number of votes for a particular office, or between
 45 the number of votes cast for and against initiated or referred measures or

1 proposals to amend the Constitution of Arizona, is less than or equal to the
2 lesser of the following:

3 1. One-tenth of one per cent of the number of votes cast for both such
4 candidates or upon such measures or proposals.

5 2. Two hundred votes in the case of an office to be filled by state
6 electors and for which the total number of votes cast is more than
7 twenty-five thousand.

8 3. Fifty votes in the case of an office to be filled by state electors
9 and for which the total number of votes cast is twenty-five thousand or less.

10 4. Two hundred votes in the case of an initiated or referred measure
11 or proposal to amend the constitution.

12 5. Fifty votes in the case of a member of the legislature.

13 6. Ten votes in the case of an office to be filled by the electors of
14 a city or town or a county or subdivision of a city, town or county.

15 7. AT THE REQUEST OF A CANDIDATE, FIVE PER CENT OF THE NUMBER OF VOTES
16 CAST FOR THE TWO CANDIDATES RECEIVING THE GREATEST NUMBER OF VOTES. FOR A
17 REQUEST PURSUANT TO THIS PARAGRAPH, A MANUAL RECOUNT SHALL BE PERFORMED.

18 B. Subsection A does not apply to elections for precinct committeemen,
19 school district governing boards, community college district governing
20 boards, fire district boards or fire district chiefs or secretary-treasurers
21 or boards of other special districts.

22 Sec. 9. Section 16-664, Arizona Revised Statutes, is amended to read:

23 16-664. Recount of votes by automatic tabulating system

24 A. In the event of a court-ordered recount of votes that were cast and
25 tabulated on electronic voting equipment for a state primary, state general
26 or state special election, the secretary of state shall order the ballots
27 recounted on an automatic tabulating system to be furnished and programmed
28 under the supervision of the secretary of state. In the event of a
29 court-ordered recount for elections other than for the office of supervisor,
30 the secretary of state may designate the county board of supervisors to
31 perform the duties assigned to the secretary of state.

32 B. If the office of secretary of state is contested, the governor
33 shall order the ballots recounted on an automatic tabulating system to be
34 furnished and programmed under the supervision of the governor.

35 C. The programs to be used in the recount of votes pursuant to this
36 section shall differ from the programs prescribed by section 16-445 and used
37 in the initial tabulation of the votes.

38 D. IN ADDITION TO USING THE AUTOMATIC TABULATING SYSTEM, A HAND COUNT
39 SHALL BE PERFORMED PURSUANT TO SECTION 16-621 FOR THE RECOUNTED RACE, EXCEPT
40 THAT THE HAND COUNT FOR THE RECOUNT SHALL NOT INCLUDE ANY PRECINCTS THAT WERE
41 PREVIOUSLY SAMPLED FOR A HAND COUNT.

1 Sec. 10. Section 16-677, Arizona Revised Statutes, is amended to read:

2 16-677. Inspection of ballots before trial; petition; bond;
3 appointment of inspectors

4 A. After the statement of contest has been filed and the action is at
5 issue, either party may have the ballots inspected before preparing for
6 trial.

7 B. The party applying for the inspection of ballots shall file with
8 the clerk of the court a verified petition stating that he cannot properly
9 prepare for trial without an inspection of the ballots and shall file with
10 the petition a bond, approved by the clerk, with two sureties, in the
11 principal amount of three hundred dollars, conditioned that he will pay the
12 costs and expenses of the inspection if he fails to maintain the contest.
13 ~~Thereupon~~ ON THE FILING, the court shall appoint three persons, one selected
14 by each of the parties and one by the court, by whom the inspection shall be
15 made. If either party fails to name a person to act in making the
16 inspection, the court shall make the appointment. IF THE INSPECTION OF THE
17 BALLOTS RESULTS IN A DIFFERENCE BETWEEN HAND COUNTING AND AUTOMATIC
18 TABULATION OF BALLOTS, THE HAND COUNTED RESULT CONSTITUTES THE OFFICIAL TALLY
19 OF VOTES.

20 C. The inspection of the ballots shall be made in the presence of the
21 legal custodian of the ballots, and the compensation of the inspectors shall
22 be ~~fixed~~ PAID by the ~~court and taxed as costs against the losing party~~ BOARD
23 OF SUPERVISORS.